

Termination of Parental Rights of Mothers with Disabilities: The Role of the Americans with Disabilities Act

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Robyn M. Powell, Susan L. Parish, Monika Mitra, Michael Waterstone & Stephen Fournier, *The Americans with Disabilities Act and Termination of Parental Rights Cases: An Examination of Appellate Decisions Involving Disabled Mothers*, __ **Yale L. & Pol'y Rev.** __ (forthcoming), available on [SSRN](#).

The right to parent is recognized by the Supreme Court as a fundamental right, but this right remains elusive for many groups, including parents with disabilities. The Americans with Disabilities Act ("ADA"), heralded as landmark legislation for people with disabilities, turned thirty this year. However, parents with disabilities are still not adequately protected by the ADA, especially when they are involved with the child welfare system. In a forthcoming article in the Yale Law & Policy Review, [Robyn M. Powell](#), [Susan L. Parish](#), [Monika Mitra](#), [Michael Waterstone](#), and [Stephen Fournier](#) use empirical data to demonstrate how the ADA is routinely ignored in parental termination decisions in the child welfare system and suggest ways to ensure that the parenting rights of people with disabilities are protected. The article analyzes results of an empirical study conducted by Robyn M. Powell as a part of her doctoral dissertation. It contextualizes the results of her empirical work with a rich discussion of disability law and policy. I found it striking how the authors demonstrate with data that parents with disabilities are denied a key tenet of reproductive justice, the right to parent with dignity.

The article describes how the legislative history of the ADA indicates that the ADA was designed to protect parents with disabilities, especially in child welfare proceedings. Title II of the ADA requires child welfare agencies and courts to abide by a host of requirements including: providing people with disabilities an equal opportunity to participate in services, programs, and activities; administering services, programs, and activities in the most integrated setting appropriate to the needs of people with disabilities; and not applying eligibility criteria that tend to screen out people with disabilities. The article notes that most importantly, the ADA requires child welfare agencies and courts to treat disabled people on a case-by-case basis, consistent with facts and objectives, and not based on stereotypes and generalizations about people with disabilities.

The article begins with a discussion of the history of eugenics in the United States that prevented people with disabilities from having and raising children. The authors examine the 1927 *Buck v. Bell* Supreme Court decision, in which Justice Holmes infamously noted that "three generations of imbeciles are enough." After *Buck v. Bell* provided the imprimatur of authority to state sterilization laws, actual use of sterilization statutes skyrocketed. For example seventeen states enacted or revised their sterilization statutes in the four years following the decision. The article describes how *Buck v. Bell* thus laid the foundation for over 65,000 forced sterilizations authorized by state law. The article also details how laws restricting marriage by people with disabilities prevented and continue to prevent people with certain disabilities from marrying and subsequently raising a family. Despite the obstacles people with disabilities have faced in terms of parenting, the [National Council on Disability](#) notes that at least 6.2 percent of American parents who have children under age 18 have at least one reported disability, with even higher percentages for American Indian/Alaska Native parents (13.9%) and African American parents (8.8%).

The article next describes the empirical study of 2,064 appellate termination of parental rights decisions that involved mothers with disabilities decided between 2006 and 2016. 93% of the cases studied resulted in the termination of parental rights. Future work comparing this statistic with termination of parental rights cases involving mothers who did not have disabilities would be helpful to put this number into context. The study also found that cases involving mothers with psychiatric disabilities or multiple disabilities were significantly more likely to end in the termination of parental

rights than those with mothers with physical or sensory disabilities. Only six percent of the cases raised the ADA and only two percent actually found that the ADA applied. The article describes *In re Hicks/Brown*, a unanimous 2017 Michigan Supreme Court decision that reversed a termination of parental rights decision due to ADA violations in a case involving a mother with an intellectual disability, holding that “termination of parental rights without reasonable efforts is improper and efforts cannot be reasonable absent reasonable modifications.” (P. 15.)

By discussing the first study to conduct quantitative analyses to identify factors that predict whether the ADA is raised or applied in these cases, the authors make a significant contribution to the literature. I found the legal and policy ramifications of the study, and the normative suggestions made by the authors, to be compelling. The authors first posit that the study results may reflect a need for education and training of judges and attorneys about the ADA and confirm that the ADA is not being effectively used during termination of parental rights proceedings with parents with disabilities. The authors note that majority of mothers in this study had incomes below 200% of the federal poverty level and likely had court-appointed attorneys to represent them. The authors suggest practical strategies for ensuring that such attorneys receive ADA training and support from disability rights attorneys. They also suggest the need for better oversight and enforcement of ADA violations in the child welfare system by the Department of Justice and the Department of Health and Human Services. Finally, the authors suggest that community-based services and supports are essential reasonable modifications required by the ADA that should be provided to parents with disabilities as soon as they are involved with the child welfare system.

Although the authors did examine income and substance abuse histories as variables in their work, some sociodemographic data, such as the race of the parents, is often absent in appellate court decisions—so it could not be analyzed in this empirical work. The authors also have another forthcoming *piece* (which will be published in the *Missouri Law Review*) analyzing different variables in the same empirical study. I look forward to future work by these authors that may illuminate how race intersects with disability and poverty in child welfare decisions. Anyone interested in the “staggering inequities” people with disabilities and their families experience within the child welfare system should read this excellent piece.

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